

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2382 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ISHWARLAL CHIMANALAL TRIVEDI

Versus

UNJHA MUNICIPALITY & ANR.

Appearance:

MR AM MITHANI for Petitioner
MR YV SHAH for Respondent No. 1
None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/09/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner has filed this Special Civil Application and prayed for quashing the resolution no.30 dated 30th April, 1984 passed by the respondent Municipality. The further prayer has been made that the respondent no.2 may not be given appointment in the municipality in pursuance

of the aforesaid resolution. It is not in dispute that the respondent no.2 has been appointed after selection on the post of clerk in P.W.D.. This court has not stayed the appointment of respondent no.2 and it is not in dispute that the respondent no.2 is working for all these years.

2. The petitioner was appointed as Accounts clerk in the municipality on 1-8-1973. Thereafter his services were terminated on 15th December, 1975. He approached to the Labour Court and the matter was settled therein by the Municipality and he was appointed as Octroi Sub-Nakadar and thereafter as Nakadar.

3. The petitioner has come up with a case that under the award annexure 'D' it has been provided that in the office staff of the municipality when the post will fall vacant at that time the opportunity on the basis of seniority and qualification will be given from Naka staff. This award has been made on the basis of the settlement in private arbitration. There is another document filed which is a settlement and in clause 16 thereof it is stated that if any post of higher grade from all kind of employees of Municipality is permanently fall vacant, or if any post of permanent type is opened at that time the preference will be given from present employees on the basis of seniority, merit and qualification on this post. The contention of the petitioner is that on the post of clerk, the appointment should have been made only by promotion and not by direct recruitment.

4. I have read the settlement referred above, but I do not find anything explicit therein that the post of clerk has to be filled in only by promotion. It appears that in the matter of appointment on the post of clerk, as per the settlement, the Naka staff may also apply and they may be given preference subject to their fulfillment of qualification, seniority and merit. In the matter of the appointments, the municipality has to decide by what mode the post has to be filled in and in case, it has resorted to the procedure of direct recruitment then it cannot be said to be illegal or arbitrary. By no stretch of imagination this procedure adopted by the municipality can be said to be in contrary to the settlement. Moreover, the petitioner has admittedly been promoted already on 17th February, 1988, and as such, nothing substantial now survives. The respondent no.2 has been selected and thereafter he has been given appointment. The petitioner has also an opportunity to compete in the selection. Taking into consideration these facts, no

interference is called for in the appointment of respondent no.2 made by respondent no.1 and further nothing substantial survives as the petitioner has already been promoted.

5. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

zgs/-